

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1417

Introduced by Assembly Member Daucher

February 22, 2005

An act to amend ~~Section 56502~~ *Sections 56502, 56505, and 56505.1* of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1417, as amended, Daucher. Special education: due process hearing.

Existing law provides for a due process hearing for the resolution of disputes that arise relating to violations of the federal Individuals with Disabilities Education Act or applicable state law, and prescribes certain procedural requirements for that due process hearing.

~~This bill would make a technical, nonsubstantive change to those provisions.~~

This bill would revise various procedures required for that due process hearing, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 56502 of the Education Code is
- 2 amended to read:
- 3 56502. (a) All requests for a due process hearing shall be
- 4 filed with the ~~superintendent~~ *Superintendent* in accordance with
- 5 paragraphs (1) and (2) of subsection (c) of Section 300.507 of
- 6 Title 34 of the Code of Federal Regulations.

1 (b) The ~~superintendent~~ *Superintendent* shall develop a model
2 form to assist parents and guardians in filing a request for due
3 process that is in accordance with paragraph (3) of subsection (c)
4 of Section 300.507 of Title 34 of the Code of Federal
5 Regulations.

6 (c) The party initiating a due process hearing by filing a
7 written request with the ~~superintendent~~ *Superintendent* shall
8 provide the other party to the hearing with a copy of the request
9 at the same time as the request is filed with the ~~superintendent~~
10 *Superintendent*.

11 (d) The ~~superintendent~~ *Superintendent* shall take steps to
12 ensure that within 45 days after receipt of the written hearing
13 request the hearing is immediately commenced and completed,
14 including, any mediation requested at any point during the
15 hearing process pursuant to paragraph (2) of subdivision (b) of
16 Section 56501, and a final administrative decision is rendered,
17 unless a continuance has been granted pursuant to Section 56505.

18 (e) Notwithstanding any procedure set forth in this chapter, a
19 public education agency and a parent or guardian may, if the
20 party initiating the hearing so chooses, meet informally to resolve
21 any issue or issues relating to the identification, assessment, or
22 education and placement of the child, or the provision of a free
23 appropriate public education to the child, to the satisfaction of
24 both parties prior to the hearing. The informal meeting shall be
25 conducted by the district superintendent, county superintendent,
26 or director of the public education agency or his or her designee.
27 Any designee appointed pursuant to this subdivision shall have
28 the authority to resolve the issue or issues.

29 (f) Upon receipt by the ~~superintendent~~ *Superintendent* of a
30 written request by the parent or guardian or public education
31 agency, the ~~superintendent~~ *Superintendent* or his or her designee
32 or designees shall immediately notify, in writing, all parties of
33 the request for the hearing and the scheduled date for the hearing.
34 The notice shall advise all parties of all their rights relating to
35 procedural safeguards. The ~~superintendent~~ *Superintendent shall*
36 *notify the parties, in writing, of the identity of the hearing officer*
37 *that will conduct the due process hearing at least 20 days prior*
38 *to the hearing. The Superintendent* or his or her designee shall
39 provide both parties with a list of persons and organizations
40 within the geographical area that can provide free or reduced cost

1 representation or other assistance in preparing for the due process
2 hearing. This list shall include a brief description of the
3 requirement to qualify for the services. The ~~superintendent~~
4 *Superintendent* or his or her designee shall have complete
5 discretion in determining which individuals or groups are
6 included on the list.

7 *(g) The party initiating a due process hearing shall detail, in*
8 *writing, the specific issues of the dispute and remedies sought*
9 *with the aid of a mediator appointed for this purpose pursuant to*
10 *Section 56500.3, and shall provide this written statement to the*
11 *other parties to the hearing at least five business days prior to*
12 *the hearing*

13 *SEC. 2. Section 56505 of the Education Code is amended to*
14 *read:*

15 56505. (a) The ~~state~~ hearing shall be conducted in
16 accordance with regulations adopted by the board.

17 (b) The hearing shall be held at a time and place reasonably
18 convenient to the parent or guardian and the pupil.

19 (c) The hearing shall be conducted by a person knowledgeable
20 in the laws and regulations governing special education and
21 administrative hearings pursuant to Section 56504.5, and who
22 has satisfactorily completed training pursuant to this subdivision.
23 The Superintendent shall establish standards for the training of
24 hearing officers, the degree of specialization of the hearing
25 officers, and the quality control mechanisms to be used to ensure
26 that the hearings are fair and the decisions are accurate. A due
27 process hearing may not be conducted by any individual listed in
28 subsection (a) of Section 300.508 of Title 34 of the Code of
29 Federal Regulations. Pursuant to subsection subdivision (b) of
30 Section 300.508 of the Title 34 of the Code of Federal
31 Regulations, a person who is qualified to conduct a hearing is not
32 an employee of the agency solely because he or she is paid by the
33 agency to serve as a hearing officer. The hearing officer shall
34 encourage the parties to a hearing to consider the option of
35 mediation as an alternative to a hearing.

36 (d) Pursuant to subsection (a) of Section 300.514 of Title 34 of
37 the Code of Federal Regulations, during the pendency of the
38 hearing proceedings, including the actual state-level hearing, or
39 judicial proceeding regarding a due process hearing, the pupil
40 shall remain in his or her present placement, except as provided

1 in Section 300.526 of Title 34 of the Code of Federal
2 Regulations, unless the public agency and the parent or guardian
3 agree otherwise. A pupil applying for initial admission to a
4 public school shall, with the consent of his or her parent or
5 guardian, be placed in the public school program until all
6 proceedings have been completed. As provided in subsection (c)
7 of Section 300.514 of Title 34 of the Code of Federal
8 Regulations, if the decision of a hearing officer in a due process
9 hearing or a state review official in an administrative appeal
10 agrees with the parent or guardian of the pupil that a change of
11 placement is appropriate, that placement shall be treated as an
12 agreement between the state or local agency and the parent or
13 guardian.

14 (e) Any party to the hearing held pursuant to this section shall
15 be afforded the following rights consistent with state and federal
16 statutes and regulations:

17 (1) The right to be accompanied and advised by counsel and
18 by individuals with special knowledge or training relating to the
19 problems of individuals with exceptional needs.

20 (2) The right to present evidence, written arguments, and oral
21 arguments.

22 (3) The right to confront, cross-examine, and compel the
23 attendance of, witnesses.

24 (4) The right to a written, or, at the option of the parents or
25 guardians, electronic verbatim record of the hearing.

26 (5) The right to written, or, at the option of the parent or
27 guardian, electronic findings of fact and decisions. The record of
28 the hearing and the findings of fact and decisions shall be
29 provided at no cost to parents or guardians in accordance with
30 paragraph (2) of subsection (c) of Section 300.509 of Title 34 of
31 the Code of Federal Regulations. The findings and decisions
32 shall be made available to the public after any personally
33 identifiable information has been deleted consistent with the
34 confidentiality requirements of subsection (c) of Section 1417 of
35 Title 20 of the United States Code and shall also be transmitted
36 to the Advisory Commission on Special Education pursuant to
37 paragraph (4) of subsection (h) of Section 1415 of Title 20 of the
38 United States Code.

39 (6) (A) The right to be informed by the other parties to the
40 hearing, at least 10 days prior to the hearing, as to what those

1 parties believe are the issues to be decided at the hearing and
2 their proposed resolution of those issues. ~~Upon~~

3 (B) *Upon* the request of a parent who is not represented by an
4 attorney, the agency responsible for conducting hearings shall
5 provide a mediator to assist the parent in identifying the issues
6 and the proposed resolution of the issues.

7 (7) (A) The right to receive from other parties to the hearing,
8 ~~at least five business days prior to the hearing,~~ a copy of all
9 documents and a list of all witnesses and their general area of
10 testimony that the parties intend to present at the hearing.
11 ~~Included in the~~

12 (B) *The party initiating a due process hearing shall submit the*
13 *information required in subparagraph (A) at least 10 business*
14 *days prior to the hearing, and other parties to the hearing shall*
15 *submit that information at least five business days prior to the*
16 *hearing.*

17 (C) *The material required to be disclosed to all parties at least*
18 ~~*five business days prior to a hearing pursuant to subparagraph*~~
19 ~~*(A) shall be include all assessments completed by that date and*~~
20 ~~*recommendations based on the assessments that the parties*~~
21 ~~*intend to use at the hearing.*~~

22 (8) The right, pursuant to paragraph (3) of subsection (a) of
23 Section 300.509 of Title 34 of the Code of Federal Regulations,
24 to prohibit the introduction of any evidence at the hearing,
25 *including, but not limited to, an assessment described in*
26 *subparagraph (C) of paragraph (7), that has not been disclosed*
27 *to that party at least five business days before the hearing. It is*
28 *the intent of the Legislature that this paragraph be strictly*
29 *enforced.*

30 (f) The hearing conducted pursuant to this section shall be
31 completed and a written, reasoned decision, including the reasons
32 for any nonpublic, nonsectarian school placement, the provision
33 of nonpublic, nonsectarian agency services, or the reimbursement
34 for such placement or services, taking into account the
35 requirements of subdivision (a) of Section 56365, shall be mailed
36 to all parties to the hearing within 45 days from the receipt by the
37 Superintendent of the request for a hearing. Either party to the
38 hearing may request the hearing officer to grant an extension.
39 The extension shall be granted upon a showing of good cause.
40 Any extension shall extend the time for rendering a final

1 administrative decision for a period only equal to the length of
2 the extension.

3 (g) Subdivision (f) does not alter the burden of proof required
4 in a due process hearing, or prevent a hearing officer from
5 ordering a compensatory remedy for an individual with
6 exceptional needs.

7 (h) The hearing conducted pursuant to this section shall be the
8 final administrative determination and binding on all parties.

9 (i) In decisions relating to the placement of individuals with
10 exceptional needs, the person conducting the state hearing shall
11 consider cost, in addition to all other factors that are considered.

12 (j) In a hearing conducted pursuant to this section, the hearing
13 officer may not base a decision solely on nonsubstantive
14 procedural errors, unless the hearing officer finds that the
15 nonsubstantive procedural errors resulted in the loss of an
16 educational opportunity to the pupil or interfered with the
17 opportunity of the parent or guardian of the pupil to participate in
18 the formulation process of the individualized education program.

19 (k) This chapter does not preclude a party aggrieved by the
20 findings and decisions in a hearing under this section from
21 exercising the right to appeal the decision to a state court of
22 competent jurisdiction. An aggrieved party may also exercise the
23 right to bring a civil action in a district court of the United States
24 without regard to the amount in controversy, pursuant to Section
25 300.512 of Title 34 of the Code of Federal Regulations. An
26 appeal shall be made within 90 days of receipt of the hearing
27 decision. During the pendency of any administrative or judicial
28 proceeding conducted pursuant to Chapter 5 (commencing with
29 Section 56500), the child involved in the hearing shall remain in
30 his or her present educational placement, unless the public
31 education agency and the parent or guardian of the child agree
32 otherwise. Any action brought under this subdivision shall adhere
33 to the provisions of subsection (b) of Section 300.512 of Title 34
34 of the Code of Federal Regulations.

35 (l) Any request for a due process hearing arising under
36 subdivision (a) of Section 56501 shall be filed within three years
37 from the date the party initiating the request knew or had reason
38 to know of the facts underlying the basis for the request.

39 (m) Pursuant to subsection (c) of Section 300.508 of Title 34
40 of the Code of Federal Regulations, each public education

1 agency shall keep a list of the persons who serve as due process
2 hearing officers, in accordance with Section 56504.5, and the list
3 shall include a statement of the qualifications of each of those
4 persons. The list of hearing officers shall be provided to the
5 public education agencies by the organization or entity under
6 contract with the department to conduct due process hearings.

7 *SEC. 3. Section 56505.1 of the Education Code is amended to*
8 *read:*

9 56505.1. The hearing officer may do any of the following
10 during the hearing:

11 (a) Question a witness on the record prior to any of the parties
12 doing so. *If neither party to the hearing is represented by an*
13 *attorney, the hearing officer shall question each witness prior to*
14 *questioning by the parties.*

15 (b) With the consent of both parties to the hearing, request that
16 conflicting experts discuss an issue or issues with each other
17 while on the record.

18 (c) Visit the proposed placement site or sites when the
19 physical attributes of the site or sites are at issue.

20 (d) Call a witness to testify at the hearing if all parties to the
21 hearing consent to the witness giving testimony or the hearing is
22 continued for at least five days after the witness is identified and
23 before the witness testifies.

24 (e) Order that an impartial assessment, including an
25 independent educational assessment, of the pupil be conducted
26 for purposes of the hearing and continue the hearing until the
27 assessment has been completed. The cost of any assessment
28 ordered under this subdivision shall be at public expense
29 pursuant to subsection (d) of Section 300.502 of Title 34 of the
30 Code of Federal Regulations and included in the contract
31 between the department and the organization or entity conducting
32 the hearing.

33 (f) Bar introduction of any documents or the testimony of any
34 witnesses not disclosed to the hearing officer at least five
35 business days prior to the hearing and bar introduction of any
36 documents or the testimony of any witnesses at the hearing
37 without the consent of the other party not disclosed to the parties
38 at least five business days prior to the hearing pursuant to
39 paragraph (7) of subdivision (e) of Section 56505.

1 (g) In decisions relating to the provision of related services by
2 other public agencies, the hearing officer may call as witnesses
3 independent medical specialists qualified to present evidence in
4 the area of the pupil's medical disability. The cost for any
5 witness called to testify under this subdivision shall be included
6 in the contract between the department and the organization or
7 entity conducting the hearing.

8 (h) Set a reasonable limit on the length of the hearing after
9 consideration of all of the following:

10 (1) The issues to be heard.

11 (2) The complexity of the facts to be proven.

12 (3) The ability of the parties and their representatives, if any,
13 to present their respective cases.

14 (4) The estimate of the parties as to the time needed to present
15 their respective cases.